

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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GENGHIS KHAN,

Plaintiff,

18 CIVIL 1967 (CS) (JCM)

-against-

**JUDGMENT**

MICHAEL CAPRA,

Defendant.

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It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Memo-Endorsed Order dated May 26, 2021, No objections to the Report and Recommendation (the "R&R") have been received, so I review it for clear error. The R&R is hereby adopted as the decision of the Court, except for the finding on page 19 that Petitioner's presence could not have meaningfully contributed to the subject of the improper ex parte conference. This was not a situation, like the cited case Figueroa, where the defendant was absent from the conference but his lawyer was present. Here not even Petitioner's lawyer was present, and the lawyer likely could have meaningfully contributed. Nevertheless, for the remaining reasons set forth by Magistrate Judge McCarthy, I agree that there was no prejudice and that the presence of Petitioner or his counsel at the ex parte conference would not have affected the outcome. Accordingly, the Petition is denied. Because reasonable jurists would not find it debatable that Petitioner has failed to make a substantial showing that he was denied a constitutional right, no certificate of appealability will issue, and the case is closed.

**DATED:** New York, New York  
May 26, 2021

**RUBY J. KRAJICK**

BY:   
Clerk of Court  
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Deputy Clerk